

§ 48.6421-5

26 CFR Ch. I (4-1-09 Edition)

§ 48.6421-5 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6421-1 or § 48.6421-2 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, credit or payment may not be allowed or made with respect to gasoline purchased tax free for use as supplies for certain vessels and airplanes, or with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6421(e)(1) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6421-1 or § 48.6421-2 is reduced by any other amount which is allowable as a credit or payable under section 6421, or is refundable under any other provision of the Code, to any person with respect to the same gasoline.

(c) *Gasoline used on farms.* Payments with respect to gasoline used on a farm for farming purposes shall be claimed under section 6420 and § 48.6420-1, and no claim in respect of that gasoline may be made under section 6421 and the regulations thereunder.

[T.D. 8043, 50 FR 32042, Aug. 8, 1985]

§ 48.6421-6 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6421, apply in respect of the payments provided for in section 6421 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline by section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6421, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6421, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 34 (section 39 of the Internal Rev-

enue Code of 1954 prior to its revision by the Tax Reform Act of 1984) with respect to amounts payable under section 6421, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6421 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credits or payment under section 6421 were the person liable for tax.

[T.D. 8043, 50 FR 32042, Aug. 8, 1985]

§ 48.6421-7 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6421 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6421 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the period covered by the claim for nonhighway purposes or in intercity, local or school buses,

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and detailed records of all fuel used which show the amount used for the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6421. However, the records must show separately the number of gallons of gasoline used for nonhighway purposes or in intercity, local, or school buses during the period covered by the claim.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6421 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

[T.D. 8043, 50 FR 32043, Aug. 8, 1985]

§ 48.6427-0 Off-highway business use.

For purposes of the regulations under section 6427, after March 31, 1983, the term “off-highway business use” is used in lieu of the term “qualified business use” and has the same meaning as “qualified business use” under § 48.6421-1(b).

[T.D. 8043, 50 FR 32046, Aug. 8, 1985]

§ 48.6427-1 Credit or payments to purchaser of special fuels resold or used for nontaxable, farming, or other purposes.

(a) *Amount of repayment*—(1) *Nontaxable or other uses.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser for a nontaxable purpose or for a purpose taxable at a lower rate than the purposes for which sold, a credit (under the circumstances

described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to—

(A) The amount of the tax imposed on the sale of the fuel to the purchaser if the purchaser resells the fuel, or

(B) If the purchaser uses the fuel, the amount of tax imposed on the sale of the fuel to the purchaser, less the amount of tax, if any, that would have been imposed on the purchaser's use of the fuel if no tax had been imposed on the sale of the fuel to the purchaser.

(ii) For purposes of paragraph (a)(1)(i) of this section, and for the regulations under section 6427 applying such paragraph, tax imposed on the sale of fuel will be treated as an overpayment by the purchaser if the person resells the fuel or uses it for a nontaxable purpose or for a purpose taxable at a lower rate than that for which sold to the purchaser. Thus, for example, special motor fuel which was sold tax paid to the purchaser for use otherwise than in a qualified business use in a motor vehicle will qualify for the payment under section 6427 if the purchaser uses it as a fuel in a qualified business use.

(2) *Used for farming purposes.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle, or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motor boat and the fuel is used on a farm for farming purposes, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) (1) or (2) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to the amount of tax that was imposed under section 4041 on the sale of the fuel. The provisions of section 6420(c) (1), (2), and (3) and § 48.6420-4 shall apply under this paragraph (a)(2) in determining whether the fuel is used on a farm for farming purposes.

(ii) The term “purchaser,” as used in paragraph (a)(2)(i) of this section, includes only a person who is an owner,